

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MAINE 2009 FEB 24 A 9 32

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4 UNITED STATES OF AMERICA, CRIMINAL ACTION
5 Plaintiff Docket No: 07-189-003
6

7 -versus-
8

9 CIRINO GONZALEZ,
10 Defendant
11 -----

12 Transcript of Proceedings

13 Pursuant to notice, the above-entitled matter came on
14 for **PRESENTENCE CONFERENCE** held before **THE HONORABLE**
15 **GEORGE Z. SINGAL**, United States District Court Judge,
16 in the United States District Court, Edward T. Gignoux
17 Courthouse, 156 Federal Street, Portland, Maine on the
18 19th day of September, 2008 at 1:00 PM as follows:

19 Appearances:

20 For the Government: Terry Ollila, Esquire
21 Assistant United States Attorney

22 For the Defendant: David H. Bownes, Esquire
23

24 Dennis R. Ford, RMR
25 Official Court Reporter

(Prepared from manual stenography and
computer aided transcription)

(CHAMBERS CONFERENCE)

THE COURT: We are here on criminal docket 07-189-GZS, District of New Hampshire case, that's a criminal docket number. We are here for a presentence report conference. Sentencing is scheduled for a week from today in New Hampshire.

Counsel, if you would enter your appearance. For the Government.

MS. OLLILA: My name is Terry Ollila. I'm an Assistant US Attorney in the District of New Hampshire.

THE COURT: Spell your last name again?

MS. OLLILA: O-I-I-I-a. I'm here on behalf of the United States. I'm covering for AUSA Robert Kinsella and Arnold Huftalen.

MR. BOWNES: David Bownes. I'm here representing Cirino Gonzalez.

THE COURT: Mr. Bownes, you have received a copy of the revised Presentence Investigation Report?

MR. BOWNES: I have.

THE COURT: And you've shared it with your client?

MR. BOWNES: I have sent it to my client.

THE COURT: Have you discussed it with your client?

MR. BOWNES: I have not.

3

THE COURT: I see your client has shared it with the rest of his world through his website.

MR. BOWNES: I don't know that and I can't --

THE COURT: Let me show it to you. That's on his Myspace site.

MR. BOWNES: Well, then I guess he did.

THE COURT: Alright. You have also filed a motion to withdraw; is that correct?

MR. BOWNES: That's correct.

THE COURT: Alright, and that hearing is scheduled for next --

THE CLERK: The 23rd at 11:00. Tuesday at 11:00.

THE COURT: Your client will be here for that?

MR. BOWNES: I assume he will be transported. On behalf of my client, he would object to any proceedings occurring outside of New Hampshire.

THE COURT: I appreciate that.

MR. BOWNES: I'm going to file that objection on his behalf.

THE COURT: You can say it right now.

MR. BOWNES: It's a simple objection and that is that he objects to any substantive proceedings occurring outside of the District of New Hampshire.

THE COURT: Give me the basis for your

objection, either statutory or Constitutional.

MR. BOWNES: I simply am -- I'm still counsel of record.

THE COURT: I don't have any problem with your objecting. To the extent that it would assist the Court in making a proper ruling, all I'm doing is asking you for the basis of your objection.

MR. BOWNES: I don't have a basis.

THE COURT: Alright, very good. That objection is overruled. I'm going to permit you to raise the basis for your motion to withdraw. Your motion was pretty sketchy.

MR. BOWNES: It is.

THE COURT: And to the extent that you want to amplify that next week, of course you should do that because I don't know anything right now, other than what I've read in your client's Myspace site which, in fact, discusses to some degree why there are problems.

MR. BOWNES: I haven't --

THE COURT: And he gives and he receives advice on the issue from multiple individuals. So your --

MR. BOWNES: This is Myspace?

THE COURT: I'll have a copy of this made for you.

5

MR. BOWNES: Thank you.

THE COURT: Government must have a copy.

MS. OLLILA: We do, yes.

THE COURT: Alright. I want to give counsel notice that I am engaged in a variant sentence that exceeds the guideline sentence based on danger to the public, based on the need for deterrence, based on the need for just punishment, and maybe some additional factors. I just want counsel to be aware of that issue.

I also want counsel to be aware that I may engage in an enhancement under the guideline computations for obstruction because of perjury during his testimony. To the extent counsel need amplification, let me know.

Now, Mr. Bownes, with regard to the Government being present during your hearing on withdrawal, do you have objection? I just need to know whether the Government -- you'll be discussing information that should be kept from the Government.

MR. BOWNES: If it were me, I would object, but as you recall, we had a hearing on his request to discharge me back when the plea didn't go through occurred.

THE COURT: Just prior to the trial.

MR. BOWNES: That was prior to the trial. I

1 believe it was on June 19th and at that time, you made
2 the inquiry of Mr. Gonzalez whether he objected to the
3 US Attorney's Office being there, and he indicated at
4 that time that he did not and the US Attorneys remained
5 in the hearing.

6 THE COURT: Taking all of that into account, a
7 representative from the US Attorney's Office should be
8 present for the motion hearing. They may or may not be
9 present in the courtroom during the course of the
10 proceedings.

11 MS. OLLILA: We will, Your Honor.

12 THE COURT: Very good. I notice, Mr. Bownes,
13 that you filed a notice of objection to the Presentence
14 Investigation Report. The report lists, I believe, ten
15 separate objections filed by the defense.

16 MR. BOWNES: That's correct.

17 THE COURT: Did you discuss these objections
18 with your client?

19 MR. BOWNES: Yes.

20 THE COURT: Will you be proceeding on all of
21 these objections at sentencing if you are still counsel
22 of record?

23 MR. BOWNES: At this time, I would proceed on
24 all of those objections.

25 THE COURT: Do you plan to have any witnesses?

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1 MR. BOWNES: The answer is I don't know.
2 Depends on what happens on --

3 THE COURT: Let's assume you're still in.

4 MR. BOWNES: Let's assume I'm still in. I
5 don't anticipate having witnesses. I do have a number
6 of letters of reference that I've forwarded on today,
7 since I just don't know what's going to happen, so I
8 forwarded those on to the probation department today.
9 I have Mr. Russo --

10 THE COURT: As soon as those are -- I would
11 like copies of them forthwith so that I can review them
12 prior to sentencing.

13 PROBATION OFFICER: Yes, sir.

14 THE COURT: Government have any witnesses that
15 you are going to present?

16 MS. OLLILA: No, we don't, Your Honor, and in
17 fact, there were two objections to the PSR. One of
18 those objections included a managerial role, that
19 probation did not include a managerial role. I know
20 that AUSA Huftalen as late as yesterday was attempting
21 to get a witness.

22 Based upon AUSA Huftalen's representation to me,
23 the United States, at the time of sentencing, is going
24 to withdraw that objection. So we are not seeking a
25 managerial role.

1 THE COURT: So you only have one objection?

2 MS. OLLILA: That's correct.

3 THE COURT: That's just a legal objection?

4 MS. OLLILA: Correct.

5 THE COURT: So you will have no witnesses?

6 MS. OLLILA: Correct, Your Honor.

7 THE COURT: So it appears that we will be able
8 to complete sentencing next Friday.

9 MR. BOWNES: I am prepared to do that. I will
10 just let the Court know what I'm going to do. I'm
11 going to meet with Cirino prior to Tuesday, whenever
12 that occurs. After I meet with him, if he tells me
13 that there is some witness that he thinks he needs to
14 call, I will give everybody notice of that.

15 THE COURT: Mr. Bownes, I would appreciate
16 your filing, if you wish under seal, no later than
17 Monday at 5:00 PM an amplification of your reasons for
18 withdrawal so that I can have an opportunity to -- and
19 you obviously will not copy the Government unless you
20 want to -- so I have an opportunity to research the
21 legal adequacy or the issues involving that issue.

22 MR. BOWNES: If you want me to talk to you in
23 camera or ex-parte at this point --

24 THE COURT: I would prefer that you file it in
25 writing.

9

1 MR. BOWNES: Okay. I will have to physically
2 file that with the US District Court.

3 THE COURT: That's alright. They will send it
4 down to me. Okay, 5:00 PM Monday.

5 MR. BOWNES: Cross my fingers, Judge, I'm
6 picking a jury in Carol County on Monday.

7 THE COURT: I understand the difficulties.

8 MR. BOWNES: I'm very sensitive to all the
9 time spent in his case.

10 THE COURT: Be aware of it. I'm going to be
11 standing here waiting at 5:00 PM for the court to send
12 it up to me. Don't make me wait for nothing.

13 MR. BOWNES: Maybe I can make arrangements
14 with Joyce, if the time becomes an issue, to fax it
15 down to the federal court.

16 THE COURT: That's fine as far as I'm
17 concerned, as long as they receive it. That's fine.
18 You can mail it.

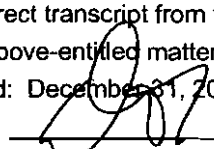
19 THE CLERK: You can e-mail it to us.

20 MR. BOWNES: I can e-mail it to Joyce.

21 THE COURT: You can talk to my clerk and meet
22 them and work it out. They are very accommodating. If
23 I have something in my hand by 5:00, I'm going to be
24 satisfied.

25 MR. BOWNES: May I make a correction?

1 THE COURT: Of course.
2 MR. BOWNES: A typographical -- well, it's not
3 a typo, it's a misquote. The last paragraph of my
4 response to the initial presentence report.
5 THE COURT: You mean in your letter?
6 MR. BOWNES: Yes. September 12th, 2008.
7 THE COURT: So this would be on page what?
8 MR. BOWNES: This is on page six of the
9 letter.
10 THE COURT: Yes.
11 MR. BOWNES: Requesting -- it says the
12 guideline range, should you not adopt Mr. Gonzalez's
13 calculations. What I think -- well, I don't think, I
14 know we would be seeking a sentence outside the
15 guideline range.
16 THE COURT: You're going to ask for a variant
17 sentence below the guideline?
18 MR. BOWNES: Yes.
19 THE COURT: You are certainly free to do that.
20 When are you going to file your sentencing memo?
21 MR. BOWNES: I hope to get that filed by
22 Monday also.
23 THE COURT: Government plan to file a memo?
24 MS. OLLILA: We do, Your Honor. I know that
25 in our objections to the probation department, we

1 THE COURT: We probably will be done with
2 sentencing by -- assuming we move forward -- clearly by
3 4:00 o'clock or so on Friday. If it goes later, that's
4 fine.
5 THE CLERK: We have it set for 10:00 o'clock.
6 THE COURT: I understand. Anything else?
7 MS. OLLILA: Nothing else, Your Honor.
8 THE COURT: Mr. Bownes?
9 MR. BOWNES: Can you give me a copy?
10 THE COURT: I sure will. I'll give you one.
11 Anything else, Mr. Bownes?
12 MR. BOWNES: No, thank you.
13 THE COURT: We are off the record.
14 (END OF PROCEEDING)
15 **CERTIFICATION**
16 I, Dennis R. Ford, Registered Merit Reporter and
17 Official Court Reporter for the United States District
18 Court, District of Maine, certify that the foregoing is
19 a correct transcript from the record of proceedings in
20 the above-entitled matter.
21 Dated: December 31, 2008
22 
23 Official Court Reporter
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11

1 indicated we would also seek a Booker variant, upward
2 variant sentence under the factors of 3553(a). Mr.
3 Huftalen indicated he would do so in writing.
4 THE COURT: When?
5 MS. OLLILA: Whenever Your Honor would like us
6 to.
7 THE COURT: 5:00 o'clock on Monday.
8 MS. OLLILA: Okay.
9 MR. BOWNES: I'm a lot more confident about
10 that.
11 THE COURT: Well, you know, this sentencing
12 has been scheduled for a significant length of time.
13 MR. BOWNES: That's true.
14 THE COURT: There is no need to wait for the
15 last second to start working on what's obviously going
16 to be necessary, including sentencing memos or anything
17 like that.
18 Alright, what other issues do we need to discuss
19 to help prepare all of us so there are no surprises as
20 we move toward sentencing. Anything for the
21 Government?
22 MS. OLLILA: Nothing from the Government, Your
23 Honor.
24 THE COURT: Mr. Bownes, anything at all?
25 MR. BOWNES: I don't think so.